

Laws and Regulations Committee Interim Agenda

Jimmy Cassidy, Chairman
Cambridge, Massachusetts

200 INTRODUCTION

The Laws and Regulations Committee (Committee) will address the following items at its Interim Meeting. Table A identifies agenda items by Reference Key Number, title, and page number. The first three digits of the Reference Key Numbers of the items are assigned from the subject series listed below. The fact that an item may appear on the agenda does not mean it will be presented to NCWM for a vote; the Committee may withdraw some items, present some items for information and further study, issue interpretations, or make specific recommendations for changes to the publications listed below. The recommendations presented in this agenda are statements of proposal and not necessarily recommendations of the Committee. The appendices to the report are listed in Table B.

This agenda contains recommendations to amend National Institute of Standards and Technology (NIST) Handbook 130, "Uniform Laws and Regulations," (2006-07), and NIST Handbook 133, "Checking the Net Contents of Packaged Goods," (2005) Fourth Edition. Revisions proposed for the handbooks are shown in **bold face print** by ~~crossing out~~ information to be deleted and underlining information to be added. Additions proposed for the handbooks are designated as such and are shown in **bold face print**. Proposals presented for information only are designated as such and are shown in *italic type*. "SI" means the International System of Units. "FPLA" means the Fair Packaging and Labeling Act. The section mark, "§," is used in most references in the text and is followed by the section number and title, (for example, Section 1.2. Weight). When used in this report, the term "weight" means "mass."

Subject Series

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Table A
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Daily Schedule

Sunday, January 21

1:00 p.m. - 5:00 p.m.

Committee Review Session: This session is open to all NCWM members but participation in the discussion is generally limited to members of the Committee.

Monday, January 22

8:30 a.m. - 5:00 p.m.

Committee Open Hearings: Comments will be accepted on the following topics:

- 232 Method of Sale Regulation
- 237 Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation
- 250 Interpretations and Guidelines
- 260 NIST Handbook 133

Tuesday, January 23

8:30 a.m. - 12:00 p.m.

Committee Open Hearings (continued): Comments will continue to be accepted on the above topics.

1:00 p.m. - 5:00 p.m.

Committee Work Session: This session is open to all NCWM members but participation in the discussion is generally limited to members of the Committee.

Wednesday, January 24

8:30 a.m. - 11:00 a.m.

Committee Work Session: This session is open to all NCWM members but participation in the discussion is generally limited to members of the Committee.

11:00 a.m. - 12:00 p.m.

Joint Session with all Standing Committees

Details of all Items
(In order by Reference Key Number)

232 METHOD OF SALE REGULATION

232-1 Temperature Compensation for Petroleum Products

See page 7 for the latest discussions and alternative recommendations on temperature compensation which came out of the 2006 meetings of several of the regional weights and measures associations.

Source: Southern Weights and Measures Association (SWMA). (See Item 232-4 in the Report of the 90th NCWM Annual Meeting in 2005.)

Recommendation: Amend the Method of Sale Regulation in Handbook 130 by adding the following:

2.XX. Refined Petroleum Products

2.XX.A. -- Where not in conflict with other statutes or regulations, refined petroleum products delivered through: (1) vehicle tank meters, (2) stationary meters with flow rates of 115 L (30 gal) or more per minute, and (3) loading rack meters may be sold with the volume adjusted to compensate for temperature. When petroleum products are sold temperature compensated:

- (a) All sales shall be in terms of liters or U.S. gallons at 15 °C (60 °F);
- (b) The temperature compensation shall be accomplished through automatic means;
- (c) The primary indicating elements, recording elements, and all recorded representations (receipts, invoices, bills of lading, etc.) shall be clearly and conspicuously marked to show that the volume delivered has been adjusted to the volume at 15 °C (60 °F);
- (d) For vehicle tank meters, all sales by the same person or company for the same metering application within the same state shall be sold temperature compensated in 12-month increments. For example, a company may not choose to operate some vehicle tank meters with automatic temperature compensators and others without. Nor may a company choose to engage the automatic temperature compensator on a device only during certain times of the year.
- (e) For stationary meters with flow rates of 115 L (30 gal) or more per minute, all sales by the same person or company for the same metering application at the same location shall be sold temperature compensated in 12-month increments. For example, a company may not choose to operate some stationary meters with automatic temperature compensators and others without. Nor may a company choose to engage the automatic temperature compensator on a device only during certain times of the year.
- (f) For loading rack meters, except for contract sales all sales by the same person or company for the same metering application at the same location shall be sold temperature compensated in 12-month increments. Contract sales may have the method of sale specified within the terms of the contract, but whichever method of sale is selected shall be implemented in 12-month increments. For example, a company may not choose to engage the automatic temperature compensator on a device only during certain times of the year.

2.XX.B. -- Where not in conflict with other statutes or regulations, petroleum products delivered through meters other than those specified in Section 2.XX.A. shall be sold *without* the volume adjusted to compensate for temperature.

Note 1: As defined in the Handbook 130 Engine Fuels, Petroleum Products, and Automotive Lubricants Inspection Law, refined petroleum products are products obtained from distilling and processing of petroleum (crude oil), unfinished oils, recycled oils, natural gas liquids, refinery blend stocks, and other miscellaneous hydrocarbon compounds.

Note 2: Paragraphs 2.XX.A.(d) and (e) shall only be effective as long as temperature-compensated sales remain permissive in at least some relevant applications. If temperature compensation becomes mandatory for all relevant applications, then these paragraphs shall be removed.

Background: Selling fuel adjusted to the volume at 15 °C (60 °F) throughout the distribution system is the most equitable way fuel can be sold without the buyer or seller gaining a competitive advantage.

This item is considered in conjunction with a temperature compensation item that is before the Specifications and Tolerances (S&T) Committee, Item 331-1, although the S&T Committee's item is limited to vehicle-tank meters.

A similar proposal was made by the Northeast Weights and Measures Association (NEWMA) in 2000. NEWMA noted that Pennsylvania, New Hampshire, Maine, and Canada permit temperature compensation in sales of products like home heating fuel and retail gasoline. In 2001 the Committee withdrew this item after hearing testimony from several jurisdictions that opposed it.

The Committee has heard numerous comments in support of, and a few comments in opposition to, temperature-compensated sales of petroleum fuels. While most comments generally supported temperature-compensated sales, the Committee received comments from a couple of jurisdictions that were concerned about the additional inspection time and resources that will be needed to test devices equipped with temperature compensators.

Among the comments received in support of temperature-compensated sales, there was a fair amount of disagreement about how this should be accomplished. Most of the discussion fell into one of three broad categories: (1) If temperature-compensated sales are allowed, what should they look like? (2) In which metering applications should temperature-compensated sales be allowed? (3) Should temperature-compensated sales be permissive or mandatory?

What should temperature-compensated sales look like?

The Committee heard from the Western Weights and Measures Association (WWMA), the Central Weights and Measures Association (CWMA), and the Southern Weights and Measures Association (SWMA) that temperature-compensated sales needed to have certain parameters established so that all sales conducted in this manner are comparable. All three regions agreed that (1) temperature-compensated sales should be adjusted to the volume at 15 °C (60 °F), (2) temperature compensation should be accomplished through automatic means, (3) indicating and recording elements and all written representations should indicate that the volume delivered is temperature compensated, and (4) all sales by the same person/company for the same metering application within the same jurisdiction must be sold either compensated or uncompensated for full calendar years.

The Committee adopted these criteria into its recommendation.

In which metering applications should temperature-compensated sales be allowed?

The Committee heard from WWMA and SWMA that temperature-compensated sales should be allowed in all metering applications through meters with flow rates of 20 gal or more per minute. The flow rate of 20 gal per minute was selected because it was believed this would effectively allow temperature-compensated sales in all applications except for standard retail motor-fuel devices. Both regions thought that temperature-compensated sales should be prohibited through standard retail motor-fuel devices.

The Committee heard from CWMA that temperature-compensated sales should be limited to sales through vehicle tank meters, loading-rack meters, and retail motor-fuel devices used exclusively for fueling trucks in sales of 100 gal or more. CWMA was concerned that allowing temperature-compensated sales in all metering applications except standard retail motor-fuel devices was overly broad. CWMA was more comfortable with listing specific applications where temperature-compensated sales would be allowed and wanted it made clear that temperature-compensated sales would be prohibited through standard retail motor-fuel devices. CWMA submitted the following language for the Committee's consideration:

2.X.X. – Wholesale refined petroleum product sales, sales of diesel fuel for truck refueling, and bulk sales of refined petroleum products of 100 gal or more may be dispensed through a meter that automatically compensates for the temperature to represent a gallon as 231 in³ at 60 °F.

2.XX.1. – Implementation: Wholesalers and retailers that implement temperature compensation for wholesale sales, devices used exclusively for diesel fuel for truck refueling, or bulk sales of refined petroleum products of 100 gal or more shall implement this practice for all meters or dispensers at such locations.

2.XX.2. – Temperature-compensation disclosure: All meters or dispensers which employ temperature compensation shall be labeled on the meter or dispenser, and the printed representation must state that the volume represented has been corrected to 60 °F.

Note 1. Refined petroleum products are derived from crude oils through processes such as catalytic cracking and fractional distillation.

Note 2. Diesel fuel means a refined middle distillate suitable for use as a fuel in a compression-ignition engine (diesel) internal combustion engine.

The Committee's recommendation constitutes a compromise. The Committee agreed with CWMA that the most prudent approach to temperature-compensated sales was to limit them to specific metering applications where almost everyone would be comfortable with its use. The Committee preferred the approach of WWMA and SWMA when defining retail motor-fuel devices used exclusively for fueling trucks and opted to define these devices based upon the meter flow rate rather than the delivery quantity. The Committee selected a flow rate of 115 L (30 gal) to be consistent with the thresholds in the LMD code in Handbook 44. Section S.4.4. and Table T.2. of the LMD code that specify the minimum flow rate of large-capacity metering devices as 115 L (30 gal) per minute. Finally, the Committee included language in the recommendation that makes it clear that, where not expressly permitted, temperature-compensated sales are prohibited.

Should temperature-compensated sales be permissive or mandatory?

The Committee heard from WWMA and SWMA that temperature-compensated sales should be implemented on a permissive basis, but that future mandatory dates should be established. Those who support a mandatory requirement believe that in the long run a permissive requirement will cause confusion within the marketplace and hinder the consumer's ability to make value comparisons between companies that sell products compensated and those that don't. Particularly with regard to home heating fuel sales, jurisdictions are concerned customers will not be told if the price per gallon they are being quoted prior to the sale is compensated or uncompensated (even if it is disclosed on the invoice they receive after the delivery). In addition, even if consumers are informed that a product quote is for a temperature-compensated delivery, consumers won't know what it means and won't be able to make a meaningful comparison between quotes for compensated and uncompensated products. WWMA and SWMA recommended that future mandatory dates be established based on a reasonable timetable for each type of metering application that takes into consideration equipment replacement costs and existing device life-expectancy. NIST suggested, as an alternative, that mandatory dates for each type of metering application be established initially for new installations and that later dates be established for existing devices.

The Committee heard from CWMA that temperature-compensated sales should be implemented on a purely permissive basis. CWMA opposes the inclusion of any future mandatory dates at this time. CWMA believes that temperature-compensated sales should be market-driven and that suppliers will make sales on a temperature-compensated basis when consumers demand it and should not be required to do so before then. Many jurisdictions believe that the imposition of a mandatory requirement is too burdensome on the industry, requiring upgrades and possibly the replacement of many meters without adequate justification.

The Committee agreed that the inclusion of mandatory dates during the initial implementation of this item was too controversial and would elicit too much opposition. The Committee felt it was important to get some form of regulation regarding temperature-compensated sales of petroleum adopted into Handbook 130 and thought that as many barriers as possible should be removed in order to achieve this goal. Although the Committee's recommendation reflects a purely

permissive requirement for temperature-compensated sales, the Committee may be willing to consider establishing future mandatory dates if a need is demonstrated after this permissive regulation is implemented.

Finally, the Committee heard requests from the American Petroleum Institute (API) to: (1) recognize and permit different methods of sale at loading rack meters when such sales are under contract, and (2) prohibit temperature-compensated sales through stationary meters with flow rates of 115 L (30 gal) or more per minute. The Committee agreed with API's first request regarding contract sales, and included language in the loading rack meter paragraph (2.XX.A (f)) to permit the method of sale to be determined by contract when an active and valid contract is present. The Committee carefully considered and then decided against API's request to prohibit temperature-compensated sales through high-flow stationary meters. The Committee rejected this request because the idea behind implementing a permissive temperature compensation standard is to allow the marketplace to drive the implementation of such a standard. The Committee has heard strong support for temperature-compensated sales through high-flow stationary meters from the market segment that uses these meters. The Committee believes that with the support of a well educated and well defined end user, it is inconsistent with the idea of marketplace-driven implementation for the Committee to create a barrier to temperature-compensated sales in this limited, well-defined application. The Committee notes that since this is a permissive requirement, the decision of whether or not to sell petroleum products with the volume adjusted to compensate for temperature remains with the seller, and that the seller will not incur any additional expense or be required to upgrade their equipment unless they make the decision to change their current method of sale practices.

At its 2006 Annual Meeting the WWMA L&R Committee heard the following testimony from the American Petroleum Institute (API) regarding recent media publications concerning the lack of temperature compensation at retail fuel stations:

- API is opposed to temperature compensation at the retail level.
- The physics of petroleum products have not changed and should not be dealt with on a basis of energy content, as seems to be the issue in considering temperature compensation. A gallon sale should result in an actual gallon delivery, which is what consumers receive today. An example was discussed regarding the fact that ethanol does not provide energy equivalent to that of gasoline, raising the question (although not recommended) of whether further compensations should be made for that issue;
- Public concerns regarding volumes of fuel delivered in retail sales are misdirected at major oil companies which operate only approximately 10 % of all stations.
- API has taken no position on temperature compensation regarding Vehicle-Tank Meters

A meter user association representative testified that approximately 15 % of retail dispensers currently in use are mechanical and are unable to be retrofitted for temperature compensation. He stated that nearly all retail dispensers would need retrofitting and many older electronic dispensers could not be modified to perform automatic temperature compensation and cannot be interfaced with software to perform the adjustments. He suggested an estimate of \$4 billion to convert all retail fuel dispensers for ATC.

A meter manufacturer testified that a decision on this issue is needed, indicating that parameters must be defined and a decision to allow or disallow temperature compensation in retail fuel transactions is necessary for the industry to determine its directions on the matter. The manufacturer stated that his company is receiving increased calls from customers requesting the technology and mentioned two major manufacturers who currently have developed ATC devices. He recommended that the Committee pursue permissive, not mandatory, language in developing the model regulation. The manufacturer noted that previous attempts to submit ATC devices for type-approval have been rejected and, therefore, Certificates of Conformance cannot be obtained. In response to other testimony suggesting that implementation of temperature compensators would merely introduce another opportunity for consumers to allege that tampering with the compensators affects delivery volume, the manufacturer stated no knowledge of any such allegations from the public regarding any existing installations.

The meter manufacturer also commented that retail ATC technology is not in the field in the United States. He stated that conversions/retrofitting would be very difficult to do in the field given the numerous fluid plumbing connections and installation of electronic components that would be necessary. He stated that most existing fuel dispensing equipment has a lifespan of 10 to 12 years.

A state director requested information regarding states that currently prohibit temperature compensation. California responded that for transactions involving 5000 gal or more the purchaser may request temperature compensation. Idaho

responded that for transactions involving 8000 gal or more the purchaser has an option to buy, on a yearly basis, temperature-compensated product and that all terminal transactions are temperature-compensated. Arizona responded that any transactions involving more than 5000 gal must be compensated for temperature. A state director further commented that he had concerns regarding any “permissive” versus “mandatory” use of ATC. He believes the consumer is more concerned with the “perception” of fraud occurring through failure to compensate for temperature variations rather than the technical issues surrounding temperature compensation.

Another state director commented that many factors must be considered in addressing temperature compensation, including realization that field tests to verify functionality and accuracy will require greatly increased inspection time and significant additional costs to regulatory agencies. Additionally, factors such as the API table of properties of the respective petroleum products and expansion factors for provers of varying composition (materials) must be considered when testing ATC dispensers. Also, he stated that determinations of temperature changes between product at the meter thermometer well and that delivered into the vessel (prover) must be taken into account.

A county weights and measures director stated support for the item, stating that temperature compensation should be permitted only on a voluntary or permissive basis to allow for the marketplace to drive its implementation.

Two state directors testified in support of the item, as written. One stated that temperature-compensated transactions are the most accurate means to transact business and it is “our responsibility” to ensure accuracy.

WWMA supports the concept that sales based upon temperature compensation provide the most accurate and equitable transaction for both buyers and sellers. The Committee received testimony from members of industry and weights and measures officials in agreement with this opinion. While WWMA recommends that temperature compensation be permissible at all levels of petroleum sales, it also recognizes that a mandate for automatic temperature compensation technology in all petroleum sales within a short time period would present unreasonable costs to various levels of the petroleum industry. By making it permissive, market forces will dictate the implementation of this technology. Therefore, WWMA recommends the following:

Amend the Method of Sale Regulation in Handbook 130 by adding the following:

2.XX. Refined Petroleum Products

2.XX.A. Where not in conflict with other statutes or regulations, refined petroleum products delivered through any meter may be sold with the volume adjusted to compensate for temperature. When petroleum products are sold temperature-compensated:

- (a) All sales shall be in terms of liters or U.S. gallons at 15 °C (60 °F);**
- (b) The temperature compensation shall be accomplished through automatic means;**
- (c) The primary indicating elements, recording elements, and all recorded representations (receipts, invoices, bills of lading, etc.) shall be clearly and conspicuously marked to show that the volume delivered has been adjusted to the volume at 15 °C (60 °F);**
- (d) All sales by the same person or company for the same metering application within the same state shall be sold temperature compensated in 12-month increments. For example, a person or company may not choose to operate some meters at one location or meters at one location within a state with automatic temperature compensators and others without. Nor may a person or company choose to engage the automatic temperature compensator on a device only during certain times of the year.**

Note: As defined in Handbook 130 Engine Fuels, Petroleum Products, and Automotive Lubricants Inspection Law, refined petroleum products are products obtained from distilling and processing of petroleum (crude oil), unfinished oils, recycled oils, natural gas liquids, refinery blend stocks, and other miscellaneous hydrocarbon compounds.

At the 2006 CWMA Interim Meeting there was discussion regarding the Veeder Root report of underground tank temperatures nationwide. Additional data needs to be accumulated to verify the impact to consumers and marketers.

The market is requesting consideration of the temperature compensation method of sale for petroleum products. A representative from an equipment manufacturer commented that customers have requested the equipment for several years. It was recommended that the S&T Committee consider the Canadian regulations for temperature compensation.

API opposed the proposal at all levels in retail. It was noted by the API representative that 90 % of the service stations are owned by independent operators, not major oil companies. Other comments for opposition included the cost of converting pumps and additional time for regulatory officials to inspect.

The CWMA L&R Committee recommends support for the Western's Annual proposal with the permissive language as a voting item. The Committee agrees that temperature compensation is the more equitable method of sale and is currently predominantly utilized at every step of the distribution channel except for retail. Additionally, the Committee believes this proposal should not be restricted to only petroleum products but should also include alternative fuels such as E85, biodiesel and biodiesel blends.

SWMA at its 2006 Annual Meeting strongly encourages the NCWM L&R and S&T Committees to separate the various temperature compensation metering applications as follows: Wholesale (loading rack), Vehicle-tank Meter, Stationary Meters with flow rates of 30 gpm or more (Truckstops), and Retail Motor-fuel Devices with a flow rate of 30 gpm.

Due to the lack of documented information on the economic impact of temperature compensation for both industry and consumer, SWMA does not support temperature compensation for dispensers with flow rates of less than 30 gpm.

232-2 Biodiesel and Fuel Ethanol Labeling

Source: Central Weights and Measures Association (CWMA)

Recommendation: Add the biodiesel and fuel ethanol labeling requirements that currently appear in Handbook 130 Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation to the Method of Sale Regulation.

Add the following text to the Method of Sale Regulation in Handbook 130:

2.XX. Biodiesel.

2.XX.1. Identification of Product. – Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

2.XX.2. Labeling of Retail Dispensers Containing Between 5 % and 20 % Biodiesel. Each retail dispenser of biodiesel blend containing more than 5 % and up to and including 20 % biodiesel shall be labeled with either:

2.XX.2.1. The capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with 'biodiesel blend.' (Examples: B10 biodiesel blend; B20 biodiesel blend), or;

2.XX.2.2. The phrase 'biodiesel blend between 5 % and 20 %' or similar words.

2.XX.3. Labeling of Retail Dispensers Containing More Than 20 % Biodiesel. – Each retail dispenser of biodiesel or biodiesel blend containing more than 20 % biodiesel shall be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either 'biodiesel' or 'biodiesel blend.' (Examples: B100 Biodiesel; B60 Biodiesel Blend)

2.XX.4. Documentation for Dispenser Labeling Purposes. – The retailer shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

2.XX.5. Exemption. – Biodiesel blends containing 5 % or less biodiesel by volume are exempted from requirements 2.XX.1 through 2.XX.4.

2.YY. Fuel Ethanol.

2.YY.1. How to Identify Fuel Ethanol. – Fuel ethanol shall be identified by the capital letter E followed by the numerical value volume percentage. (Example: E85)

2.YY.2. Retail Dispenser Labeling. – Each retail dispenser of fuel ethanol shall be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word 'ethanol.' (Example: E85 Ethanol)

2.YY.3. Additional Labeling Requirements. – Fuel ethanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

Discussion: This proposal does not impose any new requirements. These requirements have already been adopted and are published in the Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation in Handbook 130. This proposal would place duplicate requirements into the Method of Sale Regulation.

Section 2.20. of the Method of Sale Regulation in Handbook 130 currently contains requirements for the disclosure of oxygenates in gasoline blends. Including requirements for the disclosure of biodiesel, biodiesel blends, and fuel ethanol is consistent with this practice and should be required in order to ensure consumers are fully informed when making purchasing decisions.

The NCWM L&R Committee has received numerous comments in support of this item and has heard from the National Biodiesel Board that, in general, supports this item. However, the National Biodiesel Board has requested the Committee keep this item on its agenda as an informational item until ASTM finalizes its recommendations for biodiesel specifications. Waiting for the ASTM biodiesel specifications before moving this item forward for a vote will ensure there are no conflicts resulting from language discrepancies between the ASTM biodiesel specifications and the wording of this item.

The Committee has heard some concerns about perceived discrepancies between this item's ethanol labeling requirements and the Federal Trade Commission's (FTC's) regulation regarding ethanol labeling. These concerns were also raised during the placement of this language in the Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation. The Committee has previously evaluated this with the assistance of the FTC and believes there is no conflict.

At its 2006 Annual Meeting the WWMA L&R Committee received no comments regarding this item. WWMA acknowledges the National Biodiesel Board's request to the NCWM L&R Committee to keep this item Informational pending the ASTM final recommendations regarding biodiesel specifications. WWMA concurs that waiting for publication of those ASTM specifications will prevent conflicts in developing the final labeling requirements for biodiesel.

CWMA at its 2006 Interim Meeting in general supported biodiesel labeling. A few comments were received that the biodiesel label requirement should include percentages below 5 %. An update on activity within ASTM to develop a stability specification for B 100 was provided. After negative votes are adjudicated, ballots will be circulated to add B 5 limit to the D 975 diesel specification and to establish a B 20 specification. CWMA recommends keeping the biodiesel labeling as informational until ASTM establishes the biodiesel blend specifications. CWMA also recommends moving the E85 item forward as a voting item.

260 NIST HANDBOOK 133 “CHECKING THE NET CONTENTS OF PACKAGED GOODS”

260-1 2.6 Drained Weight for Glazed or Frozen Seafood

Source: Northeast Weights and Measures Association (NEWMA)

Proposal: Amend Section 2.6 Drained Weight for Glazed or Frozen Foods of NIST Handbook 133 as indicated in *italics*:

1. 2.6 Drained Weight for Glazed or Frozen *Seafoods*.
2. How is the drained weight of frozen ~~shrimp and crabmeat~~*seafood* determined?
3. Change all references to shrimp and crabmeat to just the word “*seafood*.”
4. Delete the glazed section procedure.

Discussion: At its 2006 Interim Meeting, NEWMA addressed the following problems and questions concerning the proposed changes to Section 2.6 of Handbook 133:

1. If the intent is to apply Section 2.6 to just seafood, the heading should just say Frozen Seafoods. It was the opinion of NEWMA that this was the intent. If the intent is to apply this to all frozen food, which is a very broad category then the committees need to look at the intent of this section. Does it apply to frozen vegetables?
2. The procedure paragraph is too specific. It uses just shrimp and crabmeat as examples. It should be generalized by using the term “frozen seafood.”
3. The glazed section is not needed. The immersion method will work for glazed products. However, if the committee feels they need this method, then an editorial change needs to be made. The heading says glazed raw seafood and fish and the next sentence starts that way. The next sentence ends saying, frozen glazed food product. The question is, which one is it, seafood and fish or frozen food products? Does this section cover glazed chicken wings? If it does, I don’t think chicken is a sea food.
4. If an item is not labeled glazed even though it might be glazed, how does the inspector test the product? It is very hard to tell glazed from simply frozen. Immersion works for both. Supermarkets repack large bags of shrimp and scallops into smaller bags and do not take the tare for the glazing or mark the bags glazed.

260-2 Worksheet for Liquid Volumes

Proposal: Amend Section 3.2 Gravimetric Test Procedure for Liquids of NIST Handbook 133 to add a worksheet for testing packages labeled by liquid volume.

Source: Central Weights and Measures Association (CWMA)

The proposed worksheet shown on the following page was reformatted from a worksheet created by CWMA in landscape format. It has been converted to portrait format for use in gravimetric testing as described below.

CWMA believes the worksheet is a necessary inspection tool for gravimetric testing of packages labeled by liquid volume. The worksheet is used for determining average density, nominal gross weight, converting the MAV from liquid volume to mass units, and converting the average error back to labeled units of volume. A worksheet was included in the third edition of NIST Handbook 133, but was not included in the fourth edition. This proposal is to add the worksheet to the fourth edition of NIST Handbook 133 with improvements. The new worksheet is one page instead of two. It has also been modified to provide the added benefit of helping the inspector identify the largest labeled declaration (i.e., fl oz vs. decimal pt vs. ml) and using that declaration to determine the nominal gross weight for the packages.

The worksheet has been tested in Nebraska and has proven to be an effective and vital tool for package inspectors.

CWMA believes this functional and simple worksheet in Handbook 133 will promote more inspection of packages labeled by liquid volume. Many inspectors currently shy away from those types of packages because they are intimidated by the added complexity of the procedure. This worksheet will greatly reduce that complexity to a process of simply following the steps.

CWMA believes the only downside of adding the worksheet to the Handbook is that, if adopted, it needs to be published in the handbook.

Worksheet for Packages Labeled by Volume When Using Gravimetric Test Procedure

Label Declaration	Converted to Fluid Ounce	Largest Declaration (Y=Yes, N=No)	Firm:
			Date:
			Commodity:

		1 st Package	2 nd Package	3 rd Package	4 th Package	5 th Package
1. Gross Weight						
2. Tare Wt	R_t =					
Net Wt	R_c =					
3. Flask Wt (full)				<u>Converting MAV to Decimal Pounds</u>		
4. Flask Wt (empty, wetted)				13. MAV in fl oz (Table 2-6)		
5. Wt of Liquid (step 3 - 4)				14. MAV in lb (step 13 x step 11)		
6. Volume of Flask (in fl oz)				<u>Converting Average Error to Fluid Ounces</u>		
Temperature of Liquid				15. Avg. Error in lb (Box 18 x Box 2 of Test Report)		
				16. Avg. Error in fl oz. (step 15 ÷ step 11)		
7. Liquid Density (step 5 ÷ step 6)						
8. Range of Densities						
9. Are densities within 1 scale division?		Yes <input type="checkbox"/>	No <input type="checkbox"/>			
(If no, use volumetric procedure in Sec. 3.3)						
10. Average Tare Wt (average of step 2)						
11. Average Liquid Density (average of step 7)						
12. Nominal Gross Weight (step 11 x largest labeled volume*) + step 10						
* Use largest labeled volume converted to fl oz from top of page.						

270 OTHER ITEMS – DEVELOPING ITEMS

INTRODUCTION

NCWM established a mechanism to disseminate information about emerging issues which have merit and are of national interest. Developing items have not received sufficient review by all parties affected by the proposals or may be insufficiently developed to warrant review by the NCWM L&R Committee. The developing items listed are currently under review by at least one regional association, subcommittee, or work group.

The developing items are marked according to the specific NIST Handbook into which they fall: Handbook 130 or Handbook 133.

The Committee encourages interested parties to examine the proposals included in the appendices and to send their comments to the contact listed in each part.

The Committee asks that the regional weights and measures associations, subcommittees, and work groups continue their work to develop fully each proposal. Should an association, subcommittee, or work group decide to discontinue work on a developing item, the Committee asks that it be notified. When the status of an item changes because the submitter withdraws the item, the item will be listed in a table below. For more details on items that are moved from the Developing Items list to the Committee's main agenda, refer to the new reference number in the main agenda.

270-1 Add to NIST Handbook 130, Method of Sale Regulation

§ 1.14. Labeling Requirement of Drained Weight for Commodities Packed in a Liquid Medium (foods other than meat or poultry products under USDA jurisdiction)

Source: Western Weights and Measures Association (WWMA)

Proposal: Add Section 1.14. "Labeling Requirement of Drained Weight for Commodities Packed in a Liquid Medium (foods other than meat or poultry products under USDA jurisdiction)."

Add Section 1.14. to read as follows:

1.14. Labeling Requirement of Drained Weight for Commodities Packed in a Liquid Medium. - Drained Weight is the appropriate method of sale for products packed in a medium which is inedible or invariably discarded. Food items such as, but not limited to: wet pack shrimp, lobster meat, crabmeat, clams, olives, mushrooms, bamboo shoots, water chestnuts, cocktail onions, roasted peppers, and artichokes shall be labeled with a drained weight declaration.

- (a) **Drained weight is the weight of the solid food in a container after the packing medium has been drained away.**
- (b) **Packing medium includes water, brine, and acid based liquids. Packing medium should not be construed to include oil based marinades which are generally considered part of the product.**

Background: In 1978 the Food and Drug Administration published the Fair Packaging and Labeling Act with interpretations and guidelines. FDA Guide 7563 states that drained weight is the appropriate way to list net weight of contents for products that are packed in a medium which is inedible or invariably discarded. It lists as examples food items like wet pack shrimp, green olives, ripe olives, canned mushrooms, canned clams, and canned artichokes. Furthermore under Section 403 (d) of the Federal Food, Drug, and Cosmetic Act, a food is considered misbranded if its container is so made, formed, or filled as to be misleading. The FDA guide states it would be regarded as deceptive and in conflict with Section 403 (d) to replace part of the food in the container with excessive packing medium. This is true whether or not the label bears an accurate statement of the drained weight of the food.

Some net weight declarations accurately reflect the usable content while other declarations include the weight of the packing medium, causing an unfair business advantage and making value comparison impossible for the consumer.

As markets have changed and more value-added products are being made available to consumers, it is important to specify labeling requirements in order that businesses may compete equally and consumers may have adequate information to facilitate value comparisons. In addition, consumers rely on the weight declarations when deciding which products to buy for recipes and for dietary purposes.

This proposal was initiated because of a consumer complaint.

Discussion: The WWMA L&R Committee received no comments on this item. WWMA supports forwarding this item, as submitted, to the NCWM L&R Committee for placement on its agenda. WWMA requests that NIST coordinate discussions with the Federal Food and Drug Administration (FDA) for review and concurrence.

At the 2006 Central Weights and Measures Association Interim Meeting, an industry representative mentioned that the wording of the item is problematic because it expects the regulatory jurisdiction to make a judgment call regarding packing medium which is inedible or invariably discarded. Furthermore, the wording is very open-ended with respect to the products covered by this method of sale. Comment from the group was to look at past conference reports in relation to canned clams as guidance.

To comment on this item, please contact Roger Macey (CA), by telephone at (916) 229-3043; by fax at (916) 229-3026; or by email at rmacey@cdfa.ca.gov.

270-2 Amend NIST Handbook 130, Method of Sale Regulation Section 2.13.4. Declaration of Weight

Proposal: Amend Handbook 130, Method of Sale Regulation Section 2.13.4. "Declaration of Weight." as follows:

For the purpose of this regulation, when D is not known, the minimum density used to calculate the target net weight shall be 0.92 g/cm³ ~~(when D is not known)~~. For products labeled "High Density," "HD," or similar wording, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Background: Some manufacturers of polyethylene bags labeled as "High Density" or "HD" have been found to package and label products whose labeled net weights meet calculated target net mass/weights when employing a factor of 0.92 g/cm³. When a density factor of 0.95 g/cm³ is used, as appropriate, in the calculation for high density polyethylene materials, products commonly fail to meet the calculated target net mass/weight. Further inspection typically reveals that one or more of the labeled width, thickness, or count statements are inaccurate.

Some manufacturers appear aware that weights and measures officials are restricted to test high density film using the 0.92 g/cm³ value because the actual density value is not stated on the product label and the existing procedural guidelines do not address high density polyethylene materials. When testing at manufacturing locations, weights and measures officials are able to obtain information regarding the density of the product from the manufacturer. However, at distributor locations, density information is not available and officials must test using the 0.92 g/cm³ designated in Handbooks 130 and 133.

Conversations with manufacturers and review of technical data sheets from various manufacturers have indicated that 0.95 g/cm³ is an acceptable minimum density value for HD labeled polyethylene film.

Discussion: WWMA supports forwarding this item, as amended below, to be placed on the NCWM L&R Committee agenda.

Recommendation: Amend Handbook 130 Method of Sale Regulation § 2.13.4. Declaration of Weight as follows:

For the purpose of this regulation, when the density (D) is not known, the minimum density used to calculate the target net weight shall be 0.92 g/cm³ ~~(when D is not known)~~. For products labeled "High Density," "HD," or similar wording, when D is not known, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

When the polyethylene commodity package is labeled with a specific density, the labeled density factor shall be used to calculate the target net weight. If the official determines that the labeled density

information is not accurate, the minimum density factors above shall be used to calculate the target net weight.

To comment on this item, please contact Jeff Humphreys (LA County) by telephone at (562) 940-8922, by fax at (562) 861-0278; by email at jeffh@acwm.co.la.ca.us.

270-3 Add Section 2.1.6. to NIST Handbook 130, Interpretations and Guidelines

Proposal: Add Section 2.1.6. to NIST Handbook 130 Interpretations and Guidelines as follows:

2.1.6. Labeling Requirements For Variable Weight Produce Items Sold In Clear Plastic Bags.

Interpretation:

For products, such as broccoli crowns, that are traditionally sold by variable weight as bulk produce items, it is not necessary that these produce items, when single or multiple units are packaged or wrapped in plastic film or bags, be marked with a net weight, unit price, and total price at the time the product is offered for retail sale. The FDA interpretation allows the determination of net weight at the point of sale. Also, a disclaimer statement on the package of “To be weighed at or before time of sale” is required consumer notification, assuming that there are scales at the Point of Sale. In addition, the retail price per weight must be displayed within a reasonable distance to the product when the product is displayed for the consumer at the store level. The customer must be provided with the net weight, unit price, and the total price at the time of sale.

Issue:

The NIST Weights and Measures Division (WMD) has received numerous requests for information regarding the labeling of produce items offered for sale in plastic bags. The bags may be “zip-lock” or not, may be open or closed, and may or may not have some product labeling on the bag. Industry and regulatory officials have requested guidance concerning the packaging and labeling requirements as they apply to these products when offered for sale. A similar issue was raised regarding bunches of bananas wrapped in plastic bags and offered for sale.

Background:

WMD staff reviewed the Uniform Weights and Measures Law, the Uniform Packaging and Labeling Regulation in Handbook 130, and the Food, Drug, and Cosmetic Act. An exemption to some labeling requirements was found in 21 CFR Part 101 that specifically addresses wrapped clusters of bananas. The Food, Drug, and Cosmetic Act preempts state laws where state laws are not identical to the Act for the products covered by the Act. The Food and Drug Administration (FDA) was consulted to obtain their interpretation regarding this issue. The FDA exemption and interpretation are reported below.

Summary:

The Food, Drug, and Cosmetic Act contains a specific exemption to some labeling requirements for wrapped clusters of bananas and allows the net weight to be determined at the time of sale (see wording below). FDA reported that the exemption probably was written specifically for wrapped clusters of bananas because, most likely, bananas were the only produce item using that method of packaging at the time the exemption was requested (around 1964). FDA indicated that the sale of other produce items in plastic is analogous to the sale of wrapped clusters of bananas; therefore, the exemption described in 21 CFR Part 100 also applies to other produce items, such as table grapes and broccoli crowns, for example.

References:

The Food, Drug, and Cosmetic Act (FDC Act) 21 CFR Title 21, Part 101, Subpart G, Section 101.100 (h) provides an explicit statement as it applied to bananas. 21 CFR Title 21, Part 101, Section 101.100 addresses exemptions from food labeling requirements. The text for the exemption is provided below. The exemption mentioned below is to FDC Act Section 403(e)(2), which states that a food package shall be deemed to be misbranded unless it bears a label containing an accurate statement of quantity of contents.

21 CFR Title 21, Part 101, Subpart G, Section 101.100 (h)(3):

“(i) Wrapped clusters (consumer units) of bananas of nonuniform weight intended to be unpacked from a master carton or container and weighed at or before the point of retail sale in an establishment other than that where originally packed shall be exempt from the requirements of section 403(e)(2) of the act during introduction and movement in interstate commerce and while held for sale prior to weighing;

Provided that

The master carton or container bears a label declaration of the total net weight; and the individual packages bear a conspicuous statement “To be weighed at or before the time of sale” and a correct statement setting forth the weight of the wrapper; using such term as “wrapper tare ounce”, the blank being filled in with the correct average weight of the wrapper used.

Provided further, that it is the practice of the retail establishment to weigh the individual packages either prior to or at the time of retail sale.

The act of delivering the wrapped clusters (consumer units) during the retail sale without an accurate net weight statement or alternatively without weighing at the time of sale shall be deemed an act which results in the product’s being misbranded while held for sale. Nothing in this paragraph shall be construed as requiring net-weight statements for clusters (consumer units) delivered into institutional trade, provided that the master container or carton bears the required information.”

The Act provides an exemption for Identity statements under specified conditions:

Identity:

“21 Code of Federal Regulations 101.100 (b) (3) for non-meat and non-poultry foods specifically exempts packages from identity statements if the identity of the commodity ‘can easily be identified through the wrapper or container’”.

“A statement of identity is not required if the identity of the product can easily be identified through the wrapper or container. This exemption does not apply to meat and poultry.”

Presently, the NIST Handbook 130 Uniform Packaging and Labeling Regulation addresses Responsibility statement requirements as applicable only to packages “kept, offered...or sold at...other than the premises where packed” and, furthermore, provides an exemption to Quantity statements on packaged commodities intended to be weighed prior to or at time of sale:

Responsibility:

UPLR Section 5 states:

“Any package kept, offered or exposed for sale, or sold, at any place other than the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer or distributor.”

This exempts those packages 'kept, offered or exposed for sale, or sold' on the premises where packed from the need for a responsibility statement. When retailers remove wrapped clusters of produce from a shipping container, they often inspect the packages for quality and make adjustments such as removing damaged product before putting them in a bulk display; they are, for all practical purposes, repackaging the produce and assuming responsibility for it.

Quantity (Exemption for Random Weight Packages): UPLR Section 11.26 states:

“Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the time of retail sale, are exempt from a declaration of net quantity.”

“Random weight packages that will be weighed at the time of sale do not need a quantity statement. This regulation does not address package closure and the exemption is not dependent on the package being open or closed.”

Background/Discussion: In recent years more and more produce items are being packed in clear plastic wrappers, of various sizes, in order to maintain the integrity and sanitation of the product (i.e., clusters of grapes or broccoli crowns). These products are being shipped to retail stores in fully labeled non-consumer containers. The retail stores then take the plastic wrapped produce out of the boxes and stack it in bulk retail displays on the produce counter, advertising it for sale for a certain price per pound. The consumer selects the amount desired and brings it to the checkout counter where it is weighed and the total price is determined.

This interpretation recognizes and clarifies the labeling requirements for an existing retail trade practice that is becoming more and more common. It will provide for uniform labeling guidance for both industry and enforcement officials.

NIST Handbook 130 “Uniform Packaging and Labeling Regulation” requires packaged commodities to provide accurate and adequate information as to **identity, quantity** of contents, and the name and address of a **responsible party**. However, if certain conditions exist, there are exemptions from these requirements, as cited under the proposed “Reference” section above.

WWMA received no comments on this item and supports this item as amended below:

Add Section 2.1.6. to NIST Handbook 130 Interpretations and Guidelines as follows:

2.1.6. Labeling Requirements for Variable Weight Produce Items Sold in Clear Bags or Wrapping.

Issue: The NIST Weights and Measures Division (WMD) has received numerous requests for information regarding correct labeling of produce items offered for sale in clear bags or overwrapped in clear sheeting. Such bags may or may not have a “zip-lock” feature, may be open or closed, and the bags or sheeting may or may not have some product labeling. Industry and regulatory officials have requested guidance concerning packaging and labeling requirements as they apply to these products when offered for sale. A similar issue was raised regarding bunches of bananas wrapped in plastic bags and offered for sale.

Background: WMD staff reviewed the Uniform Weights and Measures Law, the Uniform Packaging and Labeling Regulation (UPLR) in Handbook 130, and the Food, Drug, and Cosmetic Act (FDC Act). A specific exemption to quantity statement labeling requirements is established in Title 21 Code of Federal Regulations (CFR) Part 101, specifically addressing wrapped clusters of bananas. An exemption to identity statement labeling requirements for non-

meat and non-poultry products is also established in 21 CFR Part 101. Additional exemptions to Responsibility and Quantity statements, under specific conditions, are established in the UPLR.

The Food, Drug, and Cosmetic Act preempt state laws when such state laws are not identical to the Act for any products covered by the Act. The Food and Drug Administration (FDA) was consulted to obtain its interpretation regarding this issue. The FDA exemption and interpretation are reported below.

Interpretation: The Food, Drug, and Cosmetic Act contains a specific exemption from quantity statement labeling requirements for wrapped clusters of bananas and allows the net weight to be determined at the time of sale (see wording below). FDA reported that the exemption was written specifically for wrapped clusters of bananas because, most likely, bananas were the only produce commodity commonly distributed under that method of packaging at the time the exemption was requested (around 1964). FDA indicated that the sale of other produce items in clear wrapping or bags is analogous to the sale of wrapped clusters of bananas; therefore, the exemption described in 21 CFR Part 100 also applies to other produce items, such as table grapes and broccoli crowns.

Consequently, for products that are traditionally sold by variable weight as bulk produce items, it is not required that these produce items, when single or multiple units are packaged or wrapped in clear film or bags, be marked with a net weight, unit price, and total price at the time the product is offered for retail sale. The FDA interpretation allows the determination of net weight at the point of sale, provided that a scale is available to weigh the commodity at the point of sale. A disclaimer statement on the package stating, "To be weighed at or before time of sale" is required consumer notification. In addition, the retail price per unit of weight is typically displayed to the consumer within a reasonable distance of the product display at the retail store. The customer must be provided with the net weight, unit price, and the total price at the time of sale.

References: The Food, Drug, and Cosmetic Act (FDC Act) 21 CFR Title 21, Part 101, Subpart G, Section 101.100 (h) provides an explicit statement applicable to the sale of bananas. 21 CFR, Part 101, Section 101.100 addresses exemptions from food labeling requirements (text provided below). The exemption is from FDC Act Section 403(e)(2), which states that a food package shall be deemed to be misbranded if it does not bear a label containing an accurate statement of quantity of contents.

21 CFR Title 21, Part 101, Subpart G, Section 101.100 (h)(3) states:

"(i) Wrapped clusters (consumer units) of bananas of nonuniform weight intended to be unpacked from a master carton or container and weighed at or before the point of retail sale in an establishment other than that where originally packed shall be exempt from the requirements of section 403(e)(2) of the act during introduction and movement in interstate commerce and while held for sale prior to weighing:

Provided that

The master carton or container bears a label declaration of the total net weight; and the individual packages bear a conspicuous statement "To be weighed at or before the time of sale" and a correct statement setting forth the weight of the wrapper; using such term as "wrapper tare ounce", the blank being filled in with the correct average weight of the wrapper used.

Provided further, that it is the practice of the retail establishment to weigh the individual packages either prior to or at the time of retail sale.

The act of delivering the wrapped clusters (consumer units) during the retail sale without an accurate net weight statement or alternatively without weighing at the time of sale shall be deemed an act which results in the product's being misbranded while held for sale. Nothing in this paragraph shall be construed as requiring net-weight statements for clusters (consumer units) delivered into institutional trade, provided that the master container or carton bears the required information."

As discussed above, FDA indicated that the sale of other produce items in clear wrappings or bags is analogous to the sale of wrapped clusters of bananas, and an exemption to quantity statement requirements applies to other produce items, such as table grapes and broccoli crowns.

The FDC Act provides an exemption from Identity statements requirements under specified conditions:

Identity: 21 CFR Section 101.100 (b) (3) for non-meat and non-poultry foods specifically exempts packages from identity statement requirements if the identity of the commodity “can easily be identified through the wrapper or container.”

“A statement of identity is not required if the identity of the product can easily be identified through the wrapper or container. This exemption does not apply to meat and poultry.”

NIST Handbook 130 Uniform Packaging and Labeling Regulation:

Presently, the NIST Handbook 130 Uniform Packaging and Labeling Regulation (UPLR) addresses responsibility statement requirements as applicable only to packages “kept, offered...or sold at...other than the premises where packed” and, furthermore, provides an exemption to quantity statements on packaged commodities intended to be weighed prior to or at time of sale:

Responsibility: UPLR Section 5 states:

“Any package kept, offered or exposed for sale, or sold, at any place other than the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer or distributor.”

The responsibility statement requirement in UPLR Section 5 applies only to packages sold from other than the premises where packed. Conversely, when offered, exposed, and/or sold from the premises where packed, the responsibility statement requirement does not apply. When retailers remove wrapped clusters of produce from a shipping container, they often inspect the packages for quality and make adjustments such as removing damaged product before rewrapping and offering the packages for sale. In doing so, these retailers are repackaging the produce and assuming responsibility for it. In such circumstances, packages need not be labeled with a responsibility statement.

Quantity (Exemption for Random Weight Packages): UPLR Section 11.26 states:

“Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the time of retail sale, are exempt from a declaration of net quantity.”

Random weight packages that are to be weighed at the time of sale are not required to be labeled with a quantity statement. This regulation does not address package closure and the exemption is not dependent on the package being open or closed.

Summary:

Variable weight produce commodities sold in clear bags or sheeting are exempt from specific package labeling requirements under specific conditions as follows:

- Exempt from identity statement requirement when the product identity can be readily determined through the packaging
- Exempt from responsibility statement requirement when packaged or repackaged upon the premises where kept, offered, exposed for sale, or sold
- Exempt from quantity statement requirement when all of the following applies:
 - Labeled with the statement, “To be weighed at or before the time of sale”
 - Labeled with a statement, “Wrapper tare _ounce” or similar wording
 - The retailer has approved scale(s) in operation at the point of sale
 - The retailer weighs the commodity and provides net weight information at the time of sale

To comment on this item, please contact Roger Macey (CA), by telephone at (916) 229-3043; by fax at (916) 229-3026; or by email at rmacey@cdfa.ca.gov or Jess Urbina (Ocean Mist Farms) by telephone at (831) 970-7321.

270-4 Amend Handbook 133, Chapter 4.7 Polyethylene Sheeting – Test Procedure

Proposal: Amend Handbook 133, Chapter 4.7 Polyethylene Sheeting – Test Procedure

Amend Asterisked Footnote below Step 3 as follows:

*Determined by ASTM Standard D 1505-98 (or latest issue) “Standard Method of Test for Density of Plastics by the Density Gradient Technique.” For the purpose of this handbook, when the actual density is not known, the minimum density used to calculate the target net weight shall be 0.92 g/cm³ when the actual density is not known. For products labeled “High Density,” “HD,” or similar wording, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³.

Background: Some manufacturers of polyethylene bags labeled as “High Density” or “HD” have been found to package and label products whose labeled net weights meet calculated target net mass/weights when employing a factor of 0.92 g/cm³. When a density factor of 0.95 g/cm³ is used, as appropriate, in the calculation for high density polyethylene materials, products commonly fail to meet the calculated target net mass/weight. Further inspection typically reveals that one or more of the labeled width, thickness, or count statements are inaccurate.

Some manufacturers appear aware that weights and measures officials are restricted to test high density film using the 0.92 g/cm³ value because the actual density value is not stated on the product label and the existing procedural guidelines do not address high density polyethylene materials. When testing at manufacturing locations, weights and measures officials are able to obtain information regarding the density of the product from the manufacturer. However, at distributor locations, density information is not available and officials must test using the 0.92 g/cm³ designated in Handbooks 130 and 133.

Conversations with manufacturers and review of technical data sheets from various manufacturers have indicated that 0.95 g/cm³ is an acceptable minimum density value for HD labeled polyethylene film.

Discussion: The WWMA L&R Committee received no comments on this item, other than those offered for LR-2.

Recommendation: WWMA supports (in consideration of the same issues discussed in LR-2) forwarding this item, as amended below, to be placed on the NCWM L&R Committee agenda.

Amend Handbook 133, Chapter 4.7 Polyethylene Sheeting – Test Procedure as follows:

*Determined by ASTM Standard D 1505-98 (or latest issue) “Standard Method of Test for Density of Plastics by the Density Gradient Technique.” For the purpose of this handbook, when the actual density (D) is not known, the minimum density used to calculate the target net weight shall be 0.92 g/cm³ when the actual density is not known. For products labeled “High Density,” “HD,” or similar wording, when D is not known, the minimum density (D) used to calculate the target net weight shall be 0.95 g/cm³. When the polyethylene commodity package is labeled with a specific density, the labeled density factor shall be used to calculate the target net weight. If the official determines that the labeled density information is not accurate, the minimum density factors above shall be used to calculate the target net weight.

To comment on this item, please contact Jeff Humphreys (LA County) by telephone at (562) 940-8922, by fax at (562) 861-0278; by email at jeffh@acwm.co.la.ca.us.

270-5 Amend Section 2.2.1. in Handbook 130 Uniform Engine Fuels Regulation - Premium Diesel Lubricity

Source: Southern Weights and Measures Association (SWMA)

Proposal: Amend Section 2.2.1. in Handbook 130 Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation as follows:

2.2.1. Premium Diesel Fuel. – All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such a premium, super, supreme, plus, or premier must conform to the following requirements:

- (a) **Cetane Number.** – A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613.
- (b) **Low Temperature Operability.** – A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 – March 31 of each year.
- (c) **Thermal Stability.** – A minimum reflectance measurement of 80 % as determined by ASTM Standard Test Method D 6468 (180 min, 150 °C).
- (d) **Lubricity.** – A maximum wear scar diameter of 520 μm as determined by ASTM D 6079. If an enforcement jurisdiction's single test of more than 560 μm is determined, a second test shall be conducted. If the average of the two tests is more than 560 μm , the sample does not conform to the requirements of this part.

Background: A member of the petroleum industry believes the test and associated tolerances for lubricity on premium diesel specified in Section 2.2.1.(d) are inconsistent with that for regular diesel. Effective January 1, 2005, the test tolerance for regular diesel lubricity will be the ASTM D 6079 reproducibility of 136 μm (see ASTM D 975-04b). NCWM has chosen to accept the ASTM reproducibility limits for all diesel (D 975) and gasoline (D 4814) properties (see Section 7.2.2., Reproducibility), but has chosen a different reproducibility limit for premium diesel lubricity without providing any explanation as to why the ASTM reproducibility limit is insufficient. If NCWM intends to impose a stricter lubricity requirement for premium diesel, it should designate a tighter specification for this property instead of a different test tolerance (e.g., for regular and premium gasoline, premium has a different octane specification than regular but the test tolerance is the same). ASTM reproducibility limits are, by definition, based on establishing a 95 % probability that product that should pass, will pass. Applying an average test as specified in Section 2.2.1.(d) reduces this probability to only 80 %.

The Committee received comments from several members of the Premium Diesel Work Group (Work Group) who do not support the item as presented by the petroleum industry member. Work Group members believed the process that led to the current definition was very thorough and complete and the premium diesel lubricity requirements were established with a full understanding of their implications. The Work Group members felt that knowledgeable individuals provided input to the process, which lead to the consensus position contained in the current regulation. The work being done by the Work Group was reported at meetings of ASTM Subcommittee E-2 every six months. The current regulation has been endorsed by the American Petroleum Institute, the Engine Manufacturer's Association, and NCWM.

Prior to this requirement being adopted, the ASTM Lubricity Task Force conducted a great deal of research on this topic. Based on their research, the ASTM Lubricity Task Force had concluded that a limit of 520 μm would meet the requirements of equipment in the field. Since the passage of this model regulation, ASTM included a lubricity requirement for No. 1 and No. 2 diesel fuel effective January 1, 2005. The ASTM requirement is also 520 μm .

Work Group members reported that when this regulation was being written fuels with adequate lubricity provided a functional benefit to the end user. The Work Group agreed with the ASTM Lubricity Task Force that 520 μm was the correct limit to set for premium diesel. However, the Work Group's review process also indicated increased pump wear for fuels with High-Frequency Reciprocating Rig (HFRR) values greater than 560 μm . The current reproducibility value of the HFRR test method would have placed enforcement well beyond the 560 μm level, essentially allowing fuels with little lubricity protection to be sold as Premium. The Work Group believed they could not recommend a premium fuel standard that would permit excessive pump wear. Using the statistical tools provided in ASTM D 3244, the Work Group evaluated an enforcement limit of 560 μm . The statistical tools indicated that a single laboratory reporting the assigned test value would have an enforcement limit of approximately 80 % probability of acceptance, while the average of two separate laboratories reporting the assigned test value would have an enforcement limit of approximately 90 %

probability of acceptance. It was agreed that for a premium fuel the average of two test results was the best approach given the current test methods and precision available. Therefore, if a test exceeds 560 µm, then a second test must be run. The average of the two tests must exceed 560 µm before a violation would occur. At this time, the Work Group members believe this remains the best approach.

The Committee has forwarded this proposal to the Petroleum Subcommittee for review and has requested that the Subcommittee provide the Committee with its recommendation. The Subcommittee has requested that this item remain on the Committee's agenda as a developing issue until the Subcommittee can make a recommendation.

Contact: NCWM Petroleum Subcommittee, Ron Hayes, Chair, (573) 751-2922, ron.hayes@mda.mo.gov.

Discussion: At the WWMA 2006 Annual Meeting, the WWMA L&R Committee received only one comment regarding this item, acknowledging the ongoing review by the Petroleum Subcommittee. WWMA notes that the NCWM L&R Committee has forwarded the proposal for review by the Petroleum Subcommittee and agrees that this item should remain Developmental pending the Subcommittee's recommendation.

At its 2006 Interim Meeting, CWMA indicated that the NCWM Petroleum Subcommittee will make recommendations after ASTM improves the test method's precision and after the conclusion of the CRC test program. The CWMA L&R Committee is awaiting recommendation from the NCWM Petroleum Subcommittee.

270-6 Amend Handbook 130 Interpretations and Guidelines Section 2.3.2. Guidelines for the Method of Sale of Fresh Fruits and Vegetables

Source: Northeast Weights and Measures Association (NEWMA)

Proposal: Amend Handbook 130 Interpretations and Guidelines Section 2.3.2. to recognize and support innovation in modern retail food marketing approaches at all forms of outlets from typical grocery stores to the age-old farm markets.

Discussion: The method of sale guidelines for the sale of fresh fruits and vegetables that currently appear in Handbook 130 are outdated and in need of revision. The present guidelines do not recognize current retailing practices and are not expansive enough to cover many exotic and unusual fruits and vegetables that are becoming more common in the marketplace. Additionally, the present guidelines do not take into consideration the necessary limitations experienced by retailers at roadside stands and farmers markets.

The original proposal for this item reflected input from only a single jurisdiction. The Committee was informed that several industry associations have requested an opportunity to review and respond to this proposal. The Committee believes there are several factual errors within the classifications of produce provided, and there are several types of produce still not covered by the proposal provided. The Committee has made this item developmental so it may be more fully developed with input from jurisdictions throughout the country and from affected industry associations and businesses.

Discussion: At its 2006 Interim Meeting, CWMA heard a comment that this item should be moved to informational for a year. The body of the guideline needs to be circulated within CWMA before it becomes a voting item.

The WWMA L&R Committee received no comments regarding this item. It was noted by the Committee Chairman that all are encouraged to provide any input on this item to the NCWM L&R Committee.

Please contact Ross Andersen (NY Bureau of Weights and Measures) by telephone at (518) 457-3146 or by email at ross.andersen@agmkt.state.ny.us for comments or further information.

270-7 Amend Handbook 133 Section 2.3, Moisture Allowances to Provide Clearer Guidance.

Source: Northeast Weights and Measures Association (NEWMA)

Proposal: Amend Handbook 133 Section 2.3, Moisture Allowances (pages 17 through 19 of the Handbook) to provide clearer guidance.

Background: The issue of moisture loss is complex. NIST Handbook 133 currently provides specific guidance on the determination and application of moisture allowances for only a limited number of commodities. Concerns have been raised that this guidance is confusing and difficult to understand, particularly with regard to when moisture loss is applied (i.e., at the time of inspection or subsequent to the inspection). Requests have been received to reword this section to make it easier to understand and apply.

In addition, NIST Handbook 133 provides little guidance on the determination and application of moisture allowances for commodities other than those specifically listed. Weights and measures jurisdictions across the country have been struggling with how to properly handle moisture loss during packaging inspections and need more definite guidance on this issue.

The Committee does not believe it has the time or expertise to address properly the issue of moisture loss within the structure of NCWM. The Committee has decided to request activation of a NIST Moisture Loss Work Group to establish more effective and extensive guidance to NCWM regarding the proper determination and application of moisture loss.

Discussion of this Item by WWMA:

The WWMA L&R Committee received explanation from Ken Butcher, NIST, noting that a meeting was tentatively planned for November 2006, but was delayed to allow time for everyone to identify and agree on the issues to be addressed by the group to ensure that expectations for the meeting results were clear. The Weights and Measures Division (WMD) has agreed to fund the travel and attendance of one NCWM representative. Leading issues include providing additional guidance in Handbook 133 regarding the determination and application of appropriate moisture loss allowances in package inspections, with noted examples including how to address gel soaker pads in poultry/meat packages as well as how to determine moisture allowances for pasta, rice, and other commodities for which there exist no established moisture loss allowances. Additionally, guidance regarding application of moisture loss allowances at the point-of-pack should be addressed.

An industry representative urged involvement in the meeting and ensuing work on Handbook 133 amendments from the Food and Drug Administration (FDA) and the United States Department of Food and Agriculture (USDA) to ensure input and consensus from all relevant agencies. He further emphasized the need to review and consolidate all decisions and directives from any and all court rulings regarding moisture loss issues. Factors to be considered in determining and applying appropriate moisture loss allowances and influences upon such losses include commodity stability limits and varying environmental conditions at packing plants such as relative humidity and constant temperature rooms maintained at different temperature levels. The industry representative also urged that guidance be provided to industry members regarding the types of data needed to be tracked and provided by packers/manufacturers in addressing moisture allowance determinations.

Discussion of this Item by the Central Weights and Measures Association at its 2006 Interim Meeting: A comment was heard from industry that this needs to be addressed in order for businesses to be competitive. USDA and FDA need to be involved in the development of this item. A meeting is tentatively scheduled for November prior to the NCWM Interim Meeting. There was general agreement that in order for this meeting to be effective, the USDA and FDA must be present. Comments were heard in support of using the New York proposal to correct the error in Handbook 133.

Please contact Tom Coleman, NIST Moisture Loss Work Group Technical Advisor by telephone at (301) 975-4868 or by email at t.coleman@nist.gov for additional information or comments.

James Cassidy, Chairman, Cambridge, Massachusetts

Joe Benavides, Texas

Vicky Dempsey, Montgomery County, Ohio

Roger Macey, California

Stephen Benjamin, North Carolina

Vince Orr, ConAgra Foods, Associate Member Representative

Doug Hutchinson, Canada, Technical Advisor

Brian Lemon, Canada, Technical Advisor

Tom Coleman, NIST, Technical Advisor

Laws and Regulations Committee

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